Supreme Court, U.S.
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No.

In The

# Supreme Court of the United States

Thomas J. Quinn Pro Se
Petitioner

v.

Philips North America et al,

Mr. Timothy B. Gurin Esq.,

Marconi
Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Was the Petitioner denied his right to a jury trial for claims…"acts of the other prior hereto" as specified in the February 13, 2001 Order Exhibit A paragraph 6 and equal justice under law by the District Court's refusal to allow the Petitioner's motion for those claims into Court?
2. Should a District Court's Order that allows a highly regulated manufacturer of medical devices special rights that are in conflict with the laws contained in 21CFR and the separation of powers that is specific in the Constitution be allowed to be kept in the public record?
3. Do the acts in the District Court, which have compromised the integrity of the Court and deprived the Petitioner of his rights to a fair and unbiased Court, call for an exercise of this Court's supervisory powers?

## PARTIES TO THE PROCEEDINGS

Philips Medical Systems, Inc. and
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## PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

## OPINIONS BELOW

The opinion for the Court of Appeals for the First Circuit dated January 11, 2005 is reprinted in appendix A hereto at p. 13

The memorandum decision of the United States District Court for the District of Massachusetts dated March 6, 2004 is reprinted in appendix B hereto at p. 13

The Order of February 13, 2001 modifying the Court's July 5, 1995 Order is reprinted in the appendix hereto at p. 24.

Picker International Inc. v Bruce Leavitt 94f 3d 640, 1996 U.S. APP Lexis 21955 not reprinted in the appendix

The July 5, 1995 Order is reported at Picker International Inc. v Imaging Equipment Services Inc. 931F, Supp 18 (D Mass. 95) not reprinted in the appendix.

## JURISDICTION

The Court of Appeals for the first Circuit entered it decision on January 11, 2005. No petition for re-hearing was sought.

The jurisdiction of this Court to review the judgment of the first circuit is invoked under 28 U.S.C. paragraph 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The seventh Amendment to the United States constitution provides that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a

jury, shall otherwise be reexamined in any Court of the United States, than according to the rules of the common law."

The Constitution of the United States Article 1 and Article 2, the separation of powers granted by the Constitution.

Equal justice under law and the right to a fair and unbiased Court

**STATEMENT**

This important case, involving the right of an American citizen to equal justice under law, a jury trial, a Court Order that conflicts with the laws contained in 21CFR, the separation of powers between the Legislative and Judicial Branches of government and the acts of a Circuit Court Reporter that have so compromised the integrity of the Court as to prevent the Petitioner from equal justice under the law. The Petitioner in March of 2003, following the Court's order of February 13, 2001, filed a thirty-two page Motion for a claim for damages prior hereto and sought to remove all record of the Court's Orders in order to restore the protection granted by 21CFR enacted to protect the Health, Safety and Welfare of all Americans against unnecessary exposure to x-ray radiation and to restore the integrity of the Court after the abhorrent behavior of the Respondent. The Court denied the Petitioner's request to submit a Motion over 20 pages, citing that the Motion was without merit and allowed both of the Respondents Motions, each of which were over 60 pages, as the basis for the Court's March 6, 2004 Order. The Appeals Court affirmed the lower Court's decision on January 11, 2005 and added that the Petitioner could not raise the issue of the erasure of trial testimony to vacate the order because the Petitioner had not raised that argument in the Motion filed in District Court. To resolve this conflict, review should be granted.

1. Petitioner Thomas J. Quinn acting on an Order from the Court, the February 13, 2001 Order, filed a thirty two page

Motion supported by over ten thousand (10,000) pages of exhibits consisting of Food and Drug Administration (FDA) records, letters and letters and manuals from the Respondent. The Motion asks for two items. First, a claim for damages prior hereto caused by the Respondents refusal to supply Petitioner with information required by the laws contained in 21CFR sections 1020.30(h, g), 1020.33, 820.170, 1040.10-11, consensus standards and various State, Local and International laws and in accordance with the Court's Order of July 5, 1995, which specifically allowed the Petitioner to possess public information, like the information required by the laws above. Had Respondent followed the Court's Order of July 5, 1995 the Petitioner would not have the extensive damages that can be proven to a jury. By refusing to comply with FDA laws, specific directives from the FDA to the Respondent that are enclosed in the 10,000 pages of exhibits and the very Court Order, July 5 1995, that the Respondent asked the Court to grant, the Respondent caused the Petitioner additional and unnecessary financial and emotional damages. In accordance with the February 13, 2001 Modification of the Court's Order and as has been the stated policy of the Court and the Respondent that the FDA must answer the highly technical questions posed by this litigation regarding FDA laws, Petitioner waited for the final FDA letter to resolve all of the FDA issues that the Respondent raised. Petitioner then filed a Motion for a claim of damages prior hereto and to remove all of the Court's Orders from the public records to protect the Public's Health, Safety and Welfare. Petitioner was denied his right to equal justice under the law and his right to a jury trial by the Court's Order of March 6, 2004. The Petitioner would have filed a 60b Motion well within the allowed time required by law had the Respondent complied with the laws in 1995. In fact, the Petitioner sent a request letter to the Respondent in March of 1995, several months before the Court's order, requesting information pursuant to all sections of 21CFR.

The Respondent refused to comply with that request and in May of 1995 responded in a motion essentially denying their responsibilities to 21CFR section 1030.30(g) to the Court. It is clear that if the Respondent would have complied with their responsibilities under 21CFR, the July 5, 1995 court order could not have been in the context it was. Instead the Petitioner was forced, by the Court and the Respondent to petition the FDA for answers to each and every one of the Respondents FDA related questions over a period of years, when in fact. the information supplied in the Petitioner's March 2003 Motion clearly shows the Respondent knew what their responsibilities were under FDA, State and International laws at all times.

2. The Court's Order of July 5, 1995 is in conflict with the laws contained in 21CFR. These laws were enacted by Congress under the Radiation Safety and Control Act of 1972. Congress fully intended to give the Secretary of Health and Human Services the power through the FDA to protect the American public against the "inherent dangers "of ionizing radiation emitting devices (x-rays). The FDA, through 21CFR sections 1020.30-33 did in fact place safeguards in the system to protect Americans from unnecessary exposure to radiation. The Respondent is a very highly regulated medical device manufacturer. The FDA has primary regulatory authority over the Respondent. Many of the items found by the Court to be of such value to be protected by the Court through the July 5, 1995 Order are also items that the Respondent has told the FDA were needed to comply with the laws contained in 21CFR sections 10230-33 and available to Assemblers and others, literally anyone requesting these items at the cost of publication and distribution (copying and mailing) to get permission from the FDA to market and sell medical devices. Although the Courts Order of July 5, 1995 provided for items being placed in the public domain by the Respondent, the point is that these items were always in the public domain including

throughout this long and egregious litigation. The Court's Order of July 5, 1995 conflicts with the laws enacted by Congress to protect this Nation's Health, Safety and Welfare and the Respondent has used that Order in litigation and is likely to use the July 5, 1995 Order again if given the opportunity.

3. The Court Order of July 5, 1995 and other Orders of the Court conflicts with Congress's direction in FDA matters. The Court's Order gives certain rights to the Respondent, a highly regulated medical device manufacturer, which Congress did not intend to infer. The protection Congress desired to be in place to protect the American Health, Safety and Welfare was intended for all manufacturers of all medical devices. The Respondent has no extraordinary rights. The Respondent denied their responsibilities to the Court for the laws contained in 21CFR section 1020.30-33.while the record, the exhibits attached to the March 2003 Petitioners' Motion shows that Respondent was actually rewriting those same items to comply with FDA laws and presumably avoid FDA punishment. The Respondent acted in a reckless and careless manner to secure the Court Order of July 5, 1995 and to continue the Respondents' quest of using the Court to punish the Petitioner for uncovering the Respondents' illegal and evil actions.

4. The Court Reporter aided in these illegal and evil acts. It is a fact that the audio tapes of the testimony of the Petitioner and other proceedings were destroyed by the Court's Trial Reporter. It is a fact that all parties agree that the Petitioner testified on FDA matters. It is a fact that the Petitioners testimony on FDA matters and other trial proceedings were deleted from the transcripts. It is a fact that the Court Reporter told the Petitioner, in a Freedom of Information Request (FOIA), that the deletions of trial testimony and other proceedings "did not prejudice your case." It is also a fact, known to the First Circuit reporters and clerks that the audio tapes of the trial testimony and

proceedings are required by laws, 28 U.S.C.753, to be kept for a period of ten years. The Respondent placed a FOIA request into the Court in 2001, just seven years after the Trial was over. The Petitioner's right to check the record and the integrity of Judge Mark Wolf's Court were destroyed with the erasure of the tapes. The Petitioner sent a letter to Judge Mark Wolf and Chief Justice William Young upon finding out about the erasure of the tapes. This matter was not investigated adequately by the First Circuit. The Petitioner asked the Appeals Court, in the Petitioner's Appeal Brief, to investigate the erasure of the tapes. The Appeals Court did not investigate this matter.

## REASONS FOR GRANTING THE PETITION

This is a case of litigation spanning almost seventeen years that should not have been litigated as a trade secret case until the Respondent clearly identified all facts and information concerning their responsibilities under 21CFR to the Petitioner and the Courts. The Respondent is a highly regulated medical device manufacturer regulated under the authority of the laws contained in 21CFR. It is the Respondents' responsibility to follow the laws of the United States and it is the Respondents' duty to file accurate and truthful motions in litigation.

It is the responsibility of the Judges to assure the integrity of the Court. It is a matter of law that a Judge cannot be presumed to have engaged in misconduct. There is no proof to suggest that Judge Mark Wolf engaged in any inappropriate conduct. However, there is substantial proof that Judge Wolf's Court Reporter engaged in illegal, criminal and wrongful conduct against the Petitioner. It is also a fact the conduct of the Court's Reporter was not investigated properly.

**1. This Court should resolve the issue of the Petitioner's right to equal justice under law and a trial by a jury.**

By the District Court's Order of February13, 2001 and by the Seventh Amendment to the Constitution of the United States, the Petitioner has a right to a jury of his peers. The Court's Order of February 13, 2001 specifically directed both parties back to the Court of claims… prior hereto. The Petitioner did exactly that when all of the technical questions raised by the Respondent that the FDA needed to answer were answered. The Petitioner filed in excess of 10,000 pages of FDA and Respondent documentation clearly demonstrating to the Court that the Petitioner's claims were valid. The ties between the Petitioner's claims and the request to remove all Orders of the Court from public record are intrinsically linked. The filing of both of these requests did not significantly increase the amount of pages of the Motion. The Petitioner believes that to explain over 10,000 pages of factual documentation from the FDA and the Respondent in a 20 page Motion would have been a disservice to the Court. Additionally, this is the first and only Motion over 20 pages denied in the seventeen-year history of this litigation. The issues of a 60(b) motion should not have interfered with the Petitioner's rights to a jury trial for damages prior hereto. The Petitioner was denied that right by the Court. The Court did not adequately address the Petitioner's claims for damages prior hereto.

**2. This Court should resolve the question of removal from public record of an Orders of Court which is in conflict with the laws contained in 21CFR**

As a highly regulated medical device manufacturer, the Respondent has duties and responsibilities to comply with the laws contained in 21CFR. The record submitted to the District Court, in the March 2003 motion and exhibits, shows clearly that the Respondent not only did not comply

with the laws contained in 21CFR but also knew exactly what those laws and their responsibilities were at all times during the seventeen-year history of this litigation. The fact is these laws were enacted by Congress to protect the American public from exposure to x-rays. The fact is had the Court record on 21CFR issues not been erased by the Court's Reporter and had the Respondent told the truth to the District Court concerning their responsibilities under 21CFR and other laws, the District Court could not have made its ruling in July of 1995 or any other time in the manner that it did. It is highly unlikely the Respondent would have had any case to speak of had the Respondent told the truth about its duties and responsibilities under 21CFR at the outset of this seventeen-year litigation. The Respondent, today, has an obligation to clear up the Court's record. The Respondent, today, as a highly regulated manufacturer of medical devices has the responsibility to assure no other highly regulated medical device manufacturer uses the July 5, 1995 Order and any other Orders from this Court that conflict with 21CFR and other laws. In the absence of any corrective action from the Respondent in regards to the Court's Order that conflict with 21CFR, it is the duty of this Court to resolve this question.

**3. This Court should resolve the question of separation of power**

The Court's Order of July 5, 1995 and other orders of the Courts conflict with the laws Congress specifically put in place to protect this Nations Health, Safety and Welfare. These laws have been in place over thirty years without challenge. These laws are well established. To allow Court Orders that conflict with 21CFR and conflict with the wishes of Congress is Constitutionally unacceptable. There is no disagreement from the Respondent or the Court as to the validity of the laws contained in 21CFR. There are no objections by the Respondent to the laws contained in 21CFR for the Court to hear. Erring on the side that the

Respondent stated in the brief before the Appeals Court that the Respondent misunderstood the laws contained in 21CFR, we have what may be some sort of misunderstanding of the laws contained in 21CFR at best by the Respondent. The wishes of Congress must not be undermined by, at best, an error in understanding such important laws by a highly regulated medical device manufacturer and a Court where records are erased and cover up subsequently occurred by a Court Reporter, which again violated laws Congress put in place to assure the integrity of the Courts.

**4. This Court should demand a full accounting of the erasure of the audio tapes in the District Court of Judge Mark Wolf**

While Americans may tolerate the actions of a President or Members of Congress that may be morally inappropriate or even illegal, we do not tolerate a Court committing the same acts. The Judiciary of the United States has a special responsibility to the American public to assure the integrity of the Court. The laws of 28U.S.C. section 753 were enacted for just that purpose. Members of the Judiciary are appointed for life, as such, the responsibility of all Judges is to assure that all Americans get their turn at equal justice under the law and to protect the integrity of the Court against all evil that may try to enter into this unique haven of justice. The fact that the tapes of the trial proceeding in the Court of Judge Mark Wolf were erased compromises the integrity of the Court. If there were not proof of deletions of trial testimony and proceedings, one could call it a mistake and move on. However, there is proof that deletions did occur in the Court of Judge Mark Wolf in this case and it could be that this was a pattern in other cases in that Court. The erasure of the tapes and the deletions of trial testimony and proceedings raises serious questions of how many other tapes were erased and how many other Americans and others in the Court of Judge Mark Wolf had records that were

altered by this or other Court Reporters. When any question of integrity is raised, it is a matter of law that Judges cannot be presumed to be guilty. There is no proof that Judge Wolf engaged in any of the illegal acts. There are facts that the Court Reporter engaged in criminal acts of destruction of Court files and a cover up to hide these illegal and criminal acts. In the United States of America, we do not have tolerance for any person or persons altering the Court record for any reason. This Court needs to resolve this question to not only restore the integrity of the Court but to assure that no other American or others in the Court of Judge Mark Wolf suffered the same fate as the Petitioner.

## CONCLUSION

I am not a lawyer and I have no formal legal training. However, I do have the truth and I have the belief that we as a Country do not expect anything less from our Federal Courts than the whole truth and nothing but the truth as the principal and only factor guiding our Courts in all matters, especially matters involving this Nation's Health, Safety and Welfare.

The Petitioner's facts have not changed over the years. The FDA laws have not substantially changed over the years. However, the Respondents have changed from total trade secret protection to complying with FDA laws and providing much of the same information claimed to be top secret in the court of Judge Mark L. Wolf, as identified in the March 2003 Motion and exhibits.

The facts show that the truth and nothing but the truth is being prevented from being presented in the Court of Judge Mark L. Wolf. There can be no tolerance in this Country for the truth being suppressed in a Federal Court.

The fact is Judge Wolf specifically directed either party to return to his Court for claims prior hereto.

The fact is the Petitioner waited until all FDA issues raised by the Respondents were answered before filing his

32 page Motion, following local rules as best as the Petitioner understood how to do.

The fact is the Petitioner not only followed the Court's Order of February 13, 2001, the Petitioner has a Constitutional Right to address the Court and ask for claims for damages, separate from a request for removal of all court orders from public access that conflict with the Health, Safety and Welfare of every American and the separation of powers.

The fact is the Court Reporter committed criminal acts against the United States of America and in doing so prejudiced the Petitioner's rights to a fair trial. What is not known is how many other Americans did this Court Reporter prejudice by committing these same criminal and illegal acts.

With all due respect, I ask for this Writ to be granted.

Respectfully submitted,

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APPENDIX A-1

United States Court of Appeals for the First Circuit
No. 04-1495
Before
Torruella, Selya, and Lipez
Circuit Judges
Entered: January 11, 2005

After carefully reviewing the record and the parties' briefs, we affirm the district court's judgment for essentially the reasons stated in that court's Memorandum and Order, dated March 6, 2004. We add only that appellant waived his claim regarding the erasure of the audio tapes of the trial by not raising it in his motion to vacate. See Utica Mutual Ins. Co. v Weathermark Investments, Inc. 292 F.3d 77, 81 (1st cir. 2002) ("issues first asserted on appeal must be deemed waived").
Affirmed. See Local Rule 27(c).

"s/ Margaret Carter".
Chief Deputy Clerk

**APPENDIX A-2**

United States District Court District of Massachusetts
No. 87-2828-MLW
Before
Judge Mark L. Wolf
District Justice
Entered: March 6, 2004

I. INTRODUCTION

On March 10, 2003, the pro se defendant Thomas J. Quinn, filed a motion asking the court to vacate and remove all orders that the court has issued in this case and for a wide range of other relief ("the Motion"). The plaintiff, Philips Medical Systems

(Cleveland) Inc. ("Philips"), filed an opposition to the Motion and, after Quinn filed a response, filed a sur-reply. Philips also filed a motion for leave to exceed the page limit and to file a sur-reply, which the court is allowing. For the Reasons described below, the court is denying the Motion as it is without merit. Moreover, the court is allowing Philips' Motion for an Order Barring Future Litigation and enjoining Quinn from making further filings in this case or otherwise attacking the validity and effect of the judgment in this case without leave of court.

II. ANCILLARY MATTERS

Quinn has also asked the court to order Timothy B. Gurin and Marconi Medical Systems (Marconi) to respond to the Motion and sanction them for not responding within the fourteen day period set forth in Local Rule 7.1(b)(2). However, neither Gurin or nor Marconi are parties to this case. Consequently, even if this court had jurisdiction over Gurin and Marconi, they have no obligation to respond to the Motion. Therefore, the court is denying Quinn's motions seeking orders compelling Gurin and Marconi to respond and sanctions.

On September 23, 2003, Quinn filed a request for judicial review of the United States Food and Drug Administration's (the "FDA") denial of a fee-waiver under the Freedom of Information Act ("FOIA"). This request is not properly part of this case and the court is denying it. Like Gurin and Marconi, The FDA is not a party to this case. If Quinn has been aggrieved by the FDA's decision not to waive a fee for a FOIA request, he must exhaust his administrative appeals of that decision and, if those appeals are unsuccessful, seek judicial review by suing the FDA in an appropriate forum.

III. QUINN'S MOTION TO VACATE ALL ORDERS

The Motion is lengthy and seeks several forms of relief from the court. Quinn filed a motion for leave to exceed the page limit, which the court is denying. As explained below, the Motion is entirely without merit. It also fails to address the legal requirements for vacating the judgment against Quinn in this case and contains a large amount of immaterial matter. Since Quinn could have filed a motion within the twenty-page limit established by Local rule 7.1 (b) (4) by excluding irrelevant information, he has failed to demonstrate good cause why the court should permit him to exceed the page limit.

The Motion is also supplemented by a memorandum Quinn filed on September, 16, 2003, captioned "Additional Information Supporting the Necessity for a monitor to Assure Philips compliance with All Federal and State laws and the Current FDA Letter and Guidance Documents." This memorandum reiterates Quinn's request that the court again appoint a monitor in this case and grant Quinn other relief. Philips filed an Opposition asking the court to strike Quinn's memorandum and Quinn filed a response. As the court is denying the Motion and not granting Quinn any of the relief he seeks, Philips motion to strike is moot.

This case was originally brought by Philips' corporate predecessor, Picker International Corporation ("Picker") against Quinn and Imaging Equipment Services, Inc. ("Imaging") alleging misappropriation of trade secrets and copyright infringement. Imaging filed a counterclaim alleging antitrust violations. The court entered summary judgment in favor of Picker on the counterclaim. In

addition:

After a non-jury trial, on July 5, 1995, this court issued a detailed Memorandum and Order which held, in part, that:

> Quinn and Imaging have for more than a decade engaged in a relentless and extensive campaign to misappropriate Picker's legally protected intellectual property. The court also finds that defendants' misconduct continued through trial in the form of testimony fabricated by Quinn.

Picker Int'l Corp v Imaging Equip. Servs., Inc. and Thomas J. Quinn, 931 F. Supp 18, 22 (D. Mass 1995), aff'd 94 F.3d 640 (1st Cir. 1996). Thus, the court enjoined Quinn and Imaging from possessing specified Picker proprietary materials, and ordered that defendants destroy such materials in their possession or return them to Picker. Id. At 47-48. February 3, 1999 Mem. & Order at 2-3. On February 13, 2001, with the consent of the parties, the court modified the injunction to permit "Quinn to possess (but not copy)" certain materials. Pl.'s Opp. At 45 (citing Feb. 13, 2001 Order). The language of the February 13, 2001 Order "tracks the prohibitions of the Copyright Act with respect to works bearing a Picker copyright notice." Id. At 46 (citing February 13, 2001)

Judgment for Picker was entered in this case on October 27, 1995. Quinn appealed. The Court of Appeals for the First Circuit affirmed this court's decision in 1996. See 94 F..3d 640. Now, approximately seven years later, Quinn claims that subsequent developments and new information justify reopening this case.

Essentially, Quinn alleges that Picker misrepresented its obligations under FDA regulations to provide Quinn and others with information regarding its products. Def.'s Mot. At 4, 9, 10, 12, 14. Quinn asserts that if Picker was required

by federal regulations to provide certain information to him, that information could not qualify as a trade secret. He claims that Picker "fraudulently denied its obligation under these laws to the court in its May 1, 1995 Motion and in other responses to this court misrepresented the import of FDA regulations to this litigation." Def.'s Resp. at 8. Quinn claims that after the appeal of this case was decided, Philips took various actions to comply with the regulations that Philips asserted did not apply to this case.[1] These actions, Quinn argues, prove that Philips knowingly misrepresented its obligations under regulations to the court.

This is not the first time after trial that Quinn has attempted to introduce new information regarding what he claims is Philips' knowing failure to comply with FDA regulations. In denying Quinn's Motion to Supplement the Trial Record, the court stated "[t]he FDA issue could have been raised during discovery and at trial. In fact, it was actually alluded to at trial. There was not good reason to raise it six months after trial." June 5, 1995 Tr. At 41. there is even less of a good reason to raise it again in March 2003.

[1] Philips maintains that it never claimed it was exempt from the regulations, but rather that the regulations do not alter the fact that the materials Quinn misappropriated were properly found to be trade secrets. Pl.'s Sur-Reply at 5; accord Supp. Robins Aff. Ex.1 at 16-18.

Based on these allegations and a large box of related exhibits, Quinn filed the Motion, which asks the court to vacate all of the orders it entered in this case. The Motion also requests damages, sanctions, attorneys' fees, expenses, costs, an order requiring Philips and others to relinquish any files referring to Quinn or members of his family, a public apology by Philips, an order preventing the parties from referenc [ing], us[ing] or in any way cit [ing]" this litigation, fines to be paid by Philips to the U.S. Treasury, disgorgement of revenues by Philips and other relief. Since, for the reasons described below, the court is not vacating any

of its prior orders or the judgment in favor of Philips, there is no basis to grant Quinn any of the additional relief he seeks.

Although not labeled as such, the request to vacate the court's prior orders and judgment is governed by Federal Rule of Civil Procedure 60(b). See Lubben v Selective Svc. Sys. Local Bd. No. 27, 453 F.2d 645, 648 (1st Cir. 1972) ("The government's motion to vacate, although not labeled as such, was made pursuant to Rule 60 (b), Fed.R.Civ.P. Rule 60 provides the only avenue of relief from civil judgment other than appeal or independent action.)

Quinn argues that "[h]owever, in fact, the Defendant did not ask for a 60b ruling from this Court. The Defendant asked, in the interest of safety of all Americans and to restore the integrity of the judicial system from such blatant and abhorrent conduct by Philips, to vacate and remove all orders of this court." Def.'s Resp. at 5. Quinn's argument is misplaced in light of Lubben and the express language of Rule 60(b), which abolishes several writs and clearly establishes that "the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." (emphasis added.) Therefore, the court treats Quinn's motion as a motion under Rule 60(b).

For purposes of deciding Quinn's Rule 60(b) motion, the court will assume all of the factual allegations in the Motion are true.

Rule 60(b) provides that motions seeking relief for "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3)fraud (whether heretofore denominated intrinsic or extrinsic", misrepresentations, or other misconduct of an adverse party" must be filed "not more than one year after judgment, order, or proceeding was entered or taken." Quinn filed the Motion on March 10, 2003. A review of the docket reveals that all of the orders in this case were entered over a year before March 10, 2003.

Thus, the court may not decide the merits of the grounds listed in rule 60(b) (1)-(3) with respect to Quinn's request. Therefore, even assuming that Philips misrepresented its obligations under FDA regulations and such a misrepresentation is properly characterized as fraud on the court rather than as an inaccurate legal argument, Quinn's motion was not filed within the time period that would permit the court to consider Philips' alleged fraud and misrepresentations.

Quinn does not argue that the judgment in this case is void. See Fed. R. Civ. Pro. 60(b) (4). Nor does he argue that "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Fed. R. Civ. Pro. 60(b)(5).

Quinn does, however, argue that this court should vacate its prior orders "in the interest of the Public's Health, Safety and Welfare, in the interest of the integrity of administrating justice in this Court and other Courts and to uphold the Constitution of the United States of America." Def.'s Mot. at 1. This argument falls within the scope of Rule 60(b) (6)'s provision that a court may provide relief from a judgment for "any other reason justifying relief from the operation of the judgment." As Rule 60(b) (6) and other provisions of Rule 60(b) are mutually exclusive, Quinn cannot obtain relief under Rule 60(b) (6) for claims that fall within the other five categories. See Lubben, 453 F.2d at 651; see also 11 Wright & Miller 2864.

> District courts should grant Rule 60 (b) motions "only where exceptional circumstances justifying extraordinary relief exist. "Ahmed, 118 F. 3d at 891, citing Valley Citizens for a Safe Environment v. Aldridge, 969 F. 2d 1315, 1317 (1st Cir. 1992). District courts have "broad discretion" to determine whether such circumstances exist. Valley Citizens,

> 969 F.2d at 1317.The bar for such relief is set high because, as the Supreme Court noted in Ackerman v United States, 340 U.S. 193, 198, 71 S.Ct. 209, 95 L.Ed. 207 (1950), "[t] here must be an end to litigation someday...." and therefore districts courts must weigh the reasons advanced for reopening the judgment against the desire to achieve finality in litigation. E.g. Lussier v Dugger, 904 F.2.d 661, 667 (11th Cir. 1990); see also Wright et al., Federal Practice and Procedures 2857, at 256-57 (West 1995).

Paul Revere Variable Annuity Ins. Co. v. Zang, 248 F. 3d 1, 5-6 (1st Cir. 2001).

Quinn cannot overcome this high bar. He fails to demonstrate how vacating the orders in this case will serve the goals he identifies in his motion rather than Quinn's personal goal of harassing Philips and its affiliates with continued litigation. The FDA is well-equipped to protect the public's health, safety and welfare. The court will defer to the FDA's exercise of the enforcement discretion Congress has given it rather than permit Quinn to use this court in his crusade against Philips. Cf. Buckman Co. v. Pls.' Legal Comm., 531 U.S. 341, 349 (2001) (nothing that "flexibility is a critical component of the statutory and regulatory framework under which the FDA pursues difficult (and other competing) objectives" in deciding that state laws "fraud on the FDA" claims are preempted by federal law).

Quinn chose to file a motion rather than pursue an independent action to overturn the judgment in this case for what he regards as fraud on the court. Philips admits that an independent action is not subject to the one-year limitations period of Rule 60(b). See Pl.'s Opp. At 10. Thus, were Quinn to file an independent action, the court would not be barred from considering Quinn's allegations of Fraud on the court because of the passage of time. However, Philips persuasively argues that Quinn would be unable to meet the

requirements necessary to maintain an independent action.

> The essential elements of such an action are (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) A good defense..., (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law.

Carteret Sav. & Loan Ass'n v. Jackson, 812 F.2d 36, 39 n.6 (1st Cir. 1987) (ellipses in original)

Quinn cannot establish all five elements. Given the limited scope of the February 13, 2001 injunction against Quinn forbidding him from violating various provisions of the Copyright Act and Quinn's "persistent and pervasive effort[s] to....violate Picker's copyrights," the judgment in this case is not one which, in equity and good conscience, ought not be enforced. Picker, 931 F. Supp. at 44. Quinn also cannot demonstrate that his own negligence and misconduct did not contribute to his failure to adequately raise the issue of FDA regulations at trial. Thus, even if Quinn were able to establish the other three elements of an independent action, he would not succeed.

Moreover, the judgment in this case was affirmed by the Court of Appeals for the First Circuit and the appeals court issued its mandate affirming this court's decision. Accordingly, to entertain an independent action challenging the judgment in this case, "leave of the appellate court is needed before this court will consider exercising its equitable powers and consider plaintiff's independent actions." Dankese Eng's. Inc. v. Ionics Inc., 89 F.R.D 154, (D. Mass. 1981). Quinn did not obtain leave from the First Circuit to challenge its mandate.

Thus, there is no proper basis for this court to vacate the orders it has entered in this case, either under Rule 60(b) or as a result on an independent action.

Since the court is denying the Motion, Quinn's Motion to Include Recently Discovered Entities, which seeks to amend the Motion to reflect changes in the corporate relationships of various Philips affiliates, is moot.

IV. PHILIPS MOTION FOR AN ORDER BARRING FUTURE LITIGATION

In its Motion for an Order Barring Future Litigation, Philips asks the court to sue its powers under the All Writs Act to protect it from the expense of continued litigation long after this case has concluded. Quinn filed a response opposing this motion. He has, therefore, been given notice and an opportunity to be heard on this issue.

"[A] district court has the inherent power to manage its own proceedings and to control the conduct of litigants who appear before it through orders or the issuance of monetary sanctions for bad-faith, vexatious, wanton or oppressive behavior." O'Connor v. O'Toole, C.A. No. 03-12200-RCL, slip op. at 3 (D. Mass. Feb. 10, 2004). This includes "the power to enjoin litigants who abuse the court system by filing groundless and vexation litigation." Id. at 6. Additionally, the First Circuit "ha[s] recognized that, in extreme circumstances involving groundless encroachment upon the limited time and resources of the court and other parties, an injunction barring a party from filing and proceeding frivolous and vexatious lawsuits may be appropriate" under the All Writs Act. Castro v. United States, 775 f. 2d 399, 408 (1st Cir. 1985), overruled on other grounds by, Stevens v. Dept. of Treasure, 500 U.S. 1 (1991).

This case involves such extreme circumstances that an injunction of limited scope against further litigation is appropriate. Quinn's most recent series of filings is illustrative of the vexatious, malicious and inappropriate fashion in which Quinn has conducted himself throughout this litigation. Quinn engaged in repeated efforts to delay this case before trial. Quinn fabricated testimony at trial. After trial, the court found Quinn in contempt when he

willfully failed to comply with an order to pay Picker $9,947. 51 and then falsely claimed an inability to pay. Quinn's latest motion rehashes arguments that the court rejected in denying Quinn's motion to reopen the case after trial.

Additionally, the court has found Quinn improperly filed grievance complaints against Timothy B. Gurin relating to his trial testimony in this case. See Oct. 5, 1995 Mem. & Order at 2. Quinn has continued his pursuit of Gurin by seeking an order compelling him to respond to the Motion.

Quinn's efforts to reopen this case long after it has ended are extraordinary in nature and legally frivolously. Quinn has unfairly burdened Philips and the court with his efforts to improperly prolong this case and revisit issues decided long ago. Therefore, the court is exercising its inherent authority as well as its power under the all Writs Act to prevent Quinn from litigating this case any further.

Despite Quinn's misconduct in this case, it is possible that Philips will at some point violate a duty it owes to Quinn, giving Quinn a proper claim for damages or injunctive relief against Philips. Philips did not request and the court will not enter a blanket order barring Quinn from ever suing Philips. Rather, the order barring future litigation is limited in scope to prohibit Quinn from making future filings challenging the validity or effect of the judgment in this case. It will not prohibit Quinn from suing Philips or anyone else for legally cognizable injuries Quinn has suffered which do not arise out of the subject matter of this case. However, in order to receive redress for any such injuries, Quinn may not seek relief by filing motions in this court. Rather, like any other party who claims injury, he must file a complaint in the appropriate court.

If Quinn chooses to sue Philips--or anyone else--in federal court, he must comply with the Federal Rule of Civil Procedure 11. If Quinn chooses a state forum, he must comply with the analogous state requirement. Rule 11 places a duty on all litigants to conduct a reasonable inquiry before

filing a complaint or any other paper and by signing or filing the submission, certify to the court that:

> (1) [the complaint or other paper] is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of litigation:
> (2) The claim, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivious argument for the extension, modification, or reversal of existing law or the establishment of new law;
> (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

V. ORDER

Accordingly, it is hereby ORDERED that:

1. Defendant Thomas J. Quinn Motion for leave to

File Brief in Excess of Twenty Pages (Docket No. 528) is DENIED.

2. Plaintiff Philips Medical Systems (Cleveland) Inc.'s ("Philips") Unopposed Motion for Leave to File a Brief in Excess of Twenty Pages (Docket No. 539) is ALLOWED.

3. Philips Unopposed Motion for Leave to File a

Sur-Reply (Docket No. 547) is ALLOWED.

4. Quinn's Request for a Court Order and Sanctions against Marconi for Failing to Answer the March 5, 2003 Motion (Docket No. 537) is DENIED.

5. Quinn's Request for a Court Order and Sanctions

Against Timothy B. Gurin for Failing to Answer the march 5, 2003 Motion (Docket No. 551) is DENIED.

6. Quinn's Request for Judicial Review of the FDA's Denial of a Fee Waiver for Documents Related to the Case before This Court (Docket No. 556) is DENIED.

7. Quinn's Motion for Vacating and Amending All

Orders of this Court and Other Relief (Docket No. 536) is DENIED.

8. Quinn's Request to Amend March 5, 2003 Motion to Include Recently Discovered Identities (Docket No. 538) is MOOT.

9. Philips' Motion for an Order Barring Future Litigation (docket no. 542) is ALLOWED.

10. Quinn, his agents, servants, employees, and attorneys, and those persons in active concert or participation with Quinn who receive actual notice of this Order by personal service or otherwise are enjoined from filing or otherwise submitting, in this court or any other court, any pleading or other document seeking relief from judgment in this case or asserting any claim arising out of the same transactions or occurrence that were subject of this case without the prior approval of this court.

11. Paragraph 10 of this Order does not apply to and

documents Quinn files in an effort to appeal from the entry of this Order.
12. Any violation of this Order may be deemed criminal and/or civil contempt.

"s/ Mark L. Wolf"
United States District Court

**APPENDIX A-3**

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
JOINT REPORT AND MOTION TO MODIFY JULY 5, 1995 ORDER

Pursuant to the Court's December 26, 2000 Memorandum and Order, the parties hereto and James A. Ring have conferred. The parties hereto jointly move that the Court's July 5, 1995 Order be modified such that its provisions are superseded and replaced by the court's Order in the form attached hereto as Exhibit A. Upon entry of said Order, the parties jointly report that (a) the Monitor is no longer required; and (b) the defendant's pending motions are withdrawn. Mr. Ring's invoices that were approved in the Court's December 26, 2000 Memorandum and Order have been fully paid. Mr. Ring has informed the parties that, assuming that no additional services are required, he does not intend to submit any additional invoices in connection with this matter.
"s/ Judge Mark L Wolf
United States District Court

**Exhibit A**

**ORDER MODIFYING JULY 5, 1995 ORDER AND PERMANENT INJUNCTION**

Pursuant to the Joint Report of the parties, submitted in accordance with this Court's

memorandum and Order of December 26, 2000, it is hereby ORDERED as follows:

1. The permanent injunction contained in this Court's July 5, 1995 Order is hereby modified such that its provisions shall be superseded and replaced by this Order.

2. Thomas J. Quinn, and any agents, servants, Employees, and attorneys, an all other persons acting in concert with Quinn who receive actual notice of this Order, are hereby restrained and enjoined from reproducing, preparing derivative works from, distributing copies of, publicly performing, or publicly displaying any document or software bearing a copyright notice attributing copyright ownership to Picker International, Inc. or Marconi Medical Systems, Inc. to the extent such acts would be a violation of 17 U.S.C. 106 et seq. Specifically, this Order shall not prevent Quinn, or anyone acting on his behalf, from engaging in any such act with respect to any such document or software: (i) to the extent such act is a "fair use" within the meaning of 17 U.S.C. 107, including, without limitation, the copying of such materials for the purpose of providing them to a court or regulatory agency of competent jurisdiction and so providing such materials, (ii)to the extent such act is a sale or disposition permitted by 17 U.S.C 109(a); or (iii) to the extent such act is otherwise permitted by law.

3. Upon entry of this Order, Quinn or his attorneys

may take possession of the documents that were transmitted to the Monitor by the Food and Drug Administration in response to Quinn's Freedom of Information Act requests ("the FOIA documents"). If Quinn or his attorneys do not take possession of the FOIA documents within

fifteen days following entry of this Order, the Monitor may destroy the FOIA documents.

4. The court retains jurisdiction of this case for the purpose of enforcing this Order.
5. Any violation of this order may be addressed as a matter of civil and/or criminal contempt.
6. Defendant's pending motions have been withdrawn as moot, provided that this order is without prejudice to any claims that either party may have against the other with regards to the acts of the other prior hereto.